

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KEVIN D. SUTTON,

Petitioner,

v.

WARDEN LeGRAND, et al.,

Respondents.

Case No. 3:15-cv-00353-MMD-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. The matter has not been properly commenced because petitioner submitted incomplete financial paperwork. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner in the instant action has failed to submit an *in forma pauperis* application that provides the necessary financial information. Petitioner failed to include a copy of his inmate account statement. The Court is unable to see, *inter alia*, the regularity and amount of any incoming funds as well as the extent to which petitioner is making discretionary expenditures that instead could be applied to payment of the filing fee.

Due to the defects presented, the pauper application will be denied, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly-filed new petition being untimely. In this regard, petitioner at all times

1 remains responsible for calculating the running of the federal limitation period as
2 applied to his case, properly commencing a timely-filed federal habeas action, and
3 properly exhausting his claims in the state courts.

4 It is therefore ordered that the application to proceed *in forma pauperis* (dkt. no.
5 1) is denied and that this action is dismissed without prejudice to the filing of a new
6 petition in a new action with a properly completed pauper application with all new and
7 complete financial attachments.

8 It is further ordered that all pending motions are denied without prejudice.


9 It is further ordered that the Clerk of Court shall send petitioner two (2) copies
10 each of an application form to proceed *in forma pauperis* for incarcerated persons and
11 a noncapital Section 2254 habeas petition form, one (1) copy of the instructions for
12 each form, and a copy of the papers that he submitted in this action.

13 It is further ordered that petitioner may file a new petition and *in forma pauperis*
14 application in a new action, but he may not file further documents in this action.

15 It is further ordered that the Clerk of the Court shall enter judgment accordingly.

16 It is further ordered that a certificate of appealability is denied. Reasonable
17 jurists would not find the dismissal of the improperly-commenced action without
18 prejudice to be debatable or wrong.

19 DATED THIS 13th day of July 2015.

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22 MIRANDA M. DU
23 UNITED STATES DISTRICT JUDGE
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